

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of the Santa Clara Valley Transportation Authority for an order approving safety appliances to be used at the at-grade crossings of Sunol Street (82D-4.1) and Auzerais Avenue (82D-4.2) by the light rail transit line of the Vasona Light Rail Project in the City of San Jose, County of San Clara.

Application 02-01-031  
(Filed January 28, 2002)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

**Summary**

Pursuant to Rules 6(a)(3) and 6.3 of the Commission's Rules of Practice and Procedure,<sup>1</sup> this ruling sets forth the schedule, assigns a principal hearing officer, and addresses the scope of the proceeding, following a prehearing conference (PHC) held on October 9, 2003.

**Background**

This application seeks Commission approval for crossing protection planned by the applicant, Santa Clara Valley Transportation Authority (SCVTA), at two closely-spaced crossings in San Jose. These crossings are part of the much larger Vasona Light Rail Project (Vasona Project) being constructed by SCVTA.

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<sup>1</sup> Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations, and citations to sections refer to the Public Utilities Code.

Commission staff filed a protest to the application on March 29, 2002. After discussions with staff, SCVTA filed a First Amended Application (amended application) on March 11, 2003. The amended application was protested by Floor Service Supply Company (FSSC) on April 9, 2003. Settlement discussions between SCVTA and FSSC ended in August 2003.

In response to the Administrative Law Judge's (ALJ) Ruling Requiring Prehearing Conference Statements (September 22, 2003), SCVTA, FSSC, and staff filed PHC statements on October 6, 2003. In its PHC statement, staff withdrew its protest and indicated its intention not to participate as a party in this proceeding.

### **Scope of the Proceeding**

SCVTA proposes to relocate two existing crossing gates for the existing railroad tracks to align them with the new light rail track for the Vasona Project and to add a new gate across one of the entrances to FSSC's premises. SCVTA also proposes to install a traffic light at the intersection where the crossings are located.

FSSC asserts that the proposed configuration would not only interfere with access to its business by both customers and suppliers, but would create traffic and related safety problems. FSSC also claims that the proposed configuration is inadequate in light of anticipated changes in land use in the area where the crossings are located, principally a large increase in residential use. SCVTA takes the position that the proposed configuration is now and will in the future be safe, and that the configuration takes FSSC's business concerns into account. SCVTA contends that FSSC is precluded from raising the issue of impacts of future changes in land use because the Environmental Impact Report (EIR) for the project, required by the California Environmental Quality Act (CEQA), Pub. Res.

Code Sec. 21000 *et seq.*, was completed and certified by SCVTA, the lead agency under CEQA, in May 2000.

SCVTA asserts that no evidentiary hearing (EH) is needed in this proceeding, because its proposed configuration is based on adequate planning documents and meets all relevant safety criteria. At the PHC, however, FSSC raised serious questions about the quantity and quality of traffic using the two crossings. An EH focused on the traffic issues should therefore be held.

The parties accepted the ALJ's suggestion that, although SCVTA as the applicant has the burden of proof, it would simplify preparation for the hearing if FSSC distributed its testimony first. The ALJ also pointed out that the complex legal issues concerning CEQA touched on by FSSC were not an appropriate subject for the EH at this time. The ALJ proposed that FSSC file a motion addressing the CEQA issues if it intended to pursue its claims that the existing CEQA documents are inadequate.

### **Factual issues**

At this time, the following factual issues are in dispute:

- Does SCVTA's plan for crossing protection at the two crossings provide an appropriate level of safety in view of current traffic and use patterns (rail, vehicular, pedestrian, and bicycle) at and in the vicinity of the crossings;
- Does SCVTA's plan for crossing protection at the two crossings provide an appropriate level of safety in view of reasonably likely traffic and use patterns (rail, vehicular, pedestrian, and bicycle) in the reasonably near future at and in the vicinity of the crossings.

### **Legal issues**

At this time, the following legal issue is in dispute:

- Should the Commission, as a responsible agency under CEQA, undertake the preparation of additional CEQA documents (*i.e.*, an addendum or supplement to the EIR, or a subsequent EIR).

## Schedule

At the PHC, the parties agreed on a schedule for the proceeding. After the PHC, however, the ALJ determined that the dates for the EH that had been picked were not available. The ALJ proposed new dates for the EH, to which the parties agreed. The ALJ has also changed the dates for the distribution of testimony agreed on at the PHC to be consistent with the dates for the EH. At the PHC, the parties agreed to set the date for the filing of briefs and submission of the case after the close of the EH. Approximate dates for submission and the issuance of a Proposed Decision are given in the schedule for reference only.

The schedule for this proceeding is:

October 27, 2003	SCVTA and FSSC file and serve supplements to PHC statements
January 7, 2004	Testimony of FSSC distributed to parties and ALJ
January 23, 2004	Testimony of SCVTA distributed to parties and ALJ
February 2, 2004	Rebuttal testimony of FSSC distributed to parties and ALJ
February 9-11, 2004 9:30 a.m.	Evidentiary Hearing, Commission Courtroom, San Francisco
March 31, 2003 (approximate)	Case submitted
June 30, 2004 (approximate)	Proposed decision

It is my goal to close this case within the 18-month period for resolution of ratesetting proceedings. The principal hearing officer may, for good cause shown, alter this schedule within the 18-month timeframe.

Parties are reminded that written testimony is to be distributed to the parties and the Administrative Law Judge, but not filed with the Docket Office.

All testimony is to be received by the parties and the ALJ on the due date in the schedule. Testimony and exhibits are to be prepared and presented in accordance with the guidelines in the attached Appendix.

**Category of Proceeding**

This ruling confirms this proceeding as ratesetting, as preliminarily determined by the Commission.

**Assignment of Presiding Officer**

ALJ Anne Simon will be the principal hearing officer.

**Ex Parte Rules**

Ex parte communications are restricted as set forth in Rule 7.

**IT IS RULED** that:

1. The scope of this proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
3. The principal hearing officer will be Administrative Law Judge Simon.
4. This ruling confirms that this proceeding is a ratesetting matter.
5. Ex parte communications are restricted as set forth in Rule 7 of the Commission's Rules of Practice and Procedure.

Dated October 30, 2003, at San Francisco, California.

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/s/ CARL WOOD  
Carl Wood  
Assigned Commissioner

## **Appendix**

### **Prepared Written Testimony and Exhibits**

#### **Service**

All prepared written testimony should be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony should NOT be filed with the Commission's Docket Office.

#### **Identification of Exhibits in the Hearing Room**

Each party sponsoring an exhibit should, in the hearing room, provide **two copies to the ALJ and one to the court reporter**, and have at least 5 copies available for distribution to parties present in the hearing room. **The upper right hand corner of the exhibit cover sheet should be *blank* for the ALJ's exhibit stamp.** Thus, if parties "premark" exhibits in any way, they should do so in the upper left hand corner of the cover sheet. Please note that this directive applies to cross-examination exhibits as well. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the cross-examination exhibit.

#### **Cross-examination With Exhibits**

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction. An exception might exist if parties have otherwise agreed to prior disclosure, such as in the case of confidential documents.

#### **Corrections to Exhibits**

Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.

Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. Corrections of exhibits with multiple sponsors will also be identified by chapter number. For example, Exhibit 5-3-B is the second correction made to Chapter 3 of Exhibit 5.

**(END OF APPENDIX)  
CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated October 30, 2003, at San Francisco, California.

/s/ TERESITA C. GALLARDO  
Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.